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Federal Communications Commission

DA 96-1004

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 94-125  
Table of Allotments, ) RM-8534  
FM Broadcast Stations. ) RM-8575  
(Fredericksburg, Helotes and )  
Castroville, Texas) )

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

**Adopted: June 28, 1996**

**Released: July 5, 1996**

By the Chief, Policy and Rules Division:

1. The Commission has before it a Petition for Reconsideration filed by October Communications Group, Inc. ("October Communications") directed to the Report and Order in this proceeding, 10 FCC Rcd 6580 (1995). For the reasons discussed below, we are granting the Petition for Reconsideration. In doing so, we are reallocating Channel 266C from Fredericksburg, Texas, to Helotes, Texas, and are modifying the license Station KONO Channel 266C, Fredericksburg, to specify Helotes as the community of license.

Background

2. At the request of October Communications, licensee of Station KONO, Fredericksburg, Texas, the Notice of Proposed Rule Making in this proceeding proposed the reallocation of Channel 266C from Fredericksburg to Helotes, Texas, and modification of the Station KONO license to specify Helotes as the community of license, 9 FCC Rcd 6471 (1994). In response to the Notice, October Communications submitted a contingent counterproposal proposing a reallocation to Castroville, Texas, and Reply Comments. No other comments were received.

3. The Report and Order denied the proposed reallocation to either Helotes or Castroville. Notwithstanding the fact that either reallocation would provide a first local service, the Report and Order concluded that this would not provide a public interest benefit significant enough to override the loss of the only local FM service for Fredericksburg. Even though neither of the proposed reallocations would necessitate relocation of the Station KONO transmitter site, the Report and Order noted that both Helotes and Castroville are located closer to the San Antonio Urbanized Area. The Report and Order also noted the respective populations of Helotes and Castroville (1,535 and 2,159 persons) compared to the Fredericksburg population of 6,934

persons. Due to the proximity of the San Antonio Urbanized Area, Helotes receives reception services from 22 radio stations and Castroville receives reception service from 20 radio stations while Fredericksburg receives reception service from 7 radio services. Based upon the characteristics of the three communities, the Report and Order determined that it would not be in the public interest to deprive the residents of Fredericksburg of their sole local FM service.

4. In support of its Petition for Reconsideration, October Communications contends that a first local service to Helotes should have been preferred over retaining a second local service at Fredericksburg. According to October Communications, the Report and Order is inconsistent with prior actions and Commission policy. October Communications notes that except for one staff action in Van Wert, Ohio, and Monroeville, Indiana, 7 FCC Rcd 6519 (1992), we have not relied upon the relative sizes of the communities, their proximity to an Urbanized Area, or the number of reception services to deny a first local transmission service to an independent community located outside of an Urbanized Area. Finally, October Communications argues that the decision in Van Wert, supra, relied upon in the Report and Order, is inconsistent with other reallocation decisions and was premised on a Commission decision which was reversed on appeal. We agree with these arguments and are granting reconsideration of the Report and Order.

#### Discussion

5. The proposed reallocation from Fredericksburg to Helotes or Castroville was filed pursuant to the provisions of section 1.420(i) of the Commission's Rules, which permits, in limited circumstances, the reallocation of a channel from one community to another and modification of a station license without entertaining other expressions of interest for the newly allotted channel. See Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Reconsideration Order"). Under Community of License and the Reconsideration Order, an FM reallocation must serve the Commission's allotment priorities and policies set forth in Revision of FM Assignment Policies and Procedures, 90 FCC2d 88 (1982).<sup>1</sup> After careful consideration of this matter, reallocation to either Helotes or Castroville is the preferred allotment under Priority (3).

6. In reaching this decision, we first note that both Helotes and Castroville are incorporated communities with mayors and city councils, as well as local police and fire departments. Both communities have civic organizations, local churches, a post office, schools, and local businesses. In addition, Helotes has its own weekly newspaper. The record in this proceeding does not support a conclusion that either Helotes or Castroville is dependent upon the San Antonio Urbanized Area and thus not entitled to a preference as a first local service. Cf. Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

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<sup>1</sup>The allotment priorities are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. The provision of a second aural service and a first local service are treated co-equally.

7. Helotes is entitled to a preference as a first local service and the Station KONO license will be modified to specify Helotes as the community of license.<sup>2</sup> Fredericksburg will continue to receive a local transmission service from AM Station KNAF. This reallocation to Helotes is consistent with prior actions in which we have reallocated channels from a larger community to a smaller community as a first local service even though the smaller community is located closer to an Urbanized Area. See Marion and Orrville, Alabama, 6 FCC Rcd 3482 (1991); Bolivar and Nixa, Missouri, 6 FCC Rcd 3648 (1991); Fruitland and Weiser, Idaho, 7 FCC Rcd 7538 (1992); Mora, Bosque Farms and Socorro, New Mexico, 8 FCC Rcd 791 (1993); Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3181 (1995). In these cases we also did not consider the relative number of reception services available to the affected communities.<sup>3</sup>

Van Wert, Ohio and Monroeville, Indiana

8. As stated earlier, the Report and Order in this proceeding relied upon a decision in Van Wert, supra. In Van Wert, the Allocations Branch denied a proposed reallocation from Van Wert (population 11,035 persons) to Monroeville (population 1,372 persons) notwithstanding the fact that the proposed reallocation would have provided a first local service to Monroeville. Even though that proposal did not necessitate a relocation of the transmitter site, the Branch noted that Monroeville was closer to Fort Wayne, Indiana. As such, the Branch concluded that the public interest benefits of retaining a second local service at Van Wert overrode the public interest benefit of a first local service to Monroeville.

9. The decision in Van Wert is inconsistent with the actions cited above in which we have favorably considered similar proposals. Also, the decision in Van Wert relied on a Commission decision in Plainview Radio, et al, 24 FCC 405 (1958). In Plainview Radio, the Commission granted an AM construction permit to Plainview, Texas (population of 14,044 persons), over the competing AM construction permit application for Slaton, Texas (population of 5,036 persons). The Commission concluded that Slaton's closer proximity to Lubbock, Texas, diminished its need for a first local service. Accordingly, the Commission preferred a second local service to Plainview. The decision in Van Wert did not note that the decision in Plainview Radio had been appealed. On appeal, the Court of Appeals determined that this decision was not supported by sufficient evidence and remanded the decision to the Commission. Harrell v. F.C.C., 267 F 2d 629 (D.C. Cir. 1959). On remand, the Commission ultimately determined that Slaton and Lubbock are separate communities and that Slaton is entitled to a preference as a first local service. The Commission ultimately granted the construction permit to the applicant for Slaton. Plainview Radio, 21 RR 885 (1961). In view of the foregoing, we find that the decision

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<sup>2</sup>The reference coordinates for Channel 266C at Helotes, Texas, are 29-50-26 and 98-49-32. In view of our determination that Helotes is a preferred allotment as a first local service and the fact that the Castroville reallocation proposal was filed contingent on us not favorably considering the Helotes proposal, the Castroville counterproposal will be dismissed.

<sup>3</sup>In this instance, Fredericksburg will continue to receive seven reception services. We consider five reception services to be abundant. See LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).

in Van Wert was contrary to Commission policy and does not provide accurate precedent. Therefore, it will no longer be taken into consideration in resolving reallocation proposals.

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 20, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Fredericksburg, Texas	-----
Helotes, Texas	266C

11. IT IS FURTHER ORDERED, That pursuant to Section 1.420(i) of the Commission's Rules and Section 316(a) of the Communications Act of 1934, as amended, the license for Station KONO, Channel 266C, Fredericksburg, Texas, IS MODIFIED to specify Helotes, Texas, as the community of license, in lieu of Fredericksburg, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

12. IT IS FURTHER Ordered, That the aforementioned contingent counterproposal filed by October Communications Group, Inc. for reallocation of Channel 266 to Castroville, Texas (RM-8575) IS HEREBY DISMISSED.

13. IT IS FURTHER ORDERED, That the aforementioned Petition for Reconsideration filed by October Communications Group, Inc. IS GRANTED to the extent indicated above.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177.

**FEDERAL COMMUNICATIONS COMMISSION**

Douglas W. Webbink  
Chief, Policy and Rules Division  
Mass Media Bureau